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are cases where the contingency is the donee's surviving some one,¹² or coming into possession of a life estate;¹³ in the second, cases where powers are given executors to sell on the termination of a life estate,¹⁴ and cases of testamentary powers.¹⁵

Accordingly, in the case of covenants, we find that those made before the specified event are, in the first class of cases, good executions in equity,¹⁶ and in the second, invalid.¹⁷ The former are instanced by a series of cases where successive life estates were created with a power to any tenant in possession to appoint by way of jointure, and covenants to appoint made by life tenants before their subsequent coming into possession were held to be good equitable appointments, on the ground that the requirement that the life tenant be in possession affected only the arising of the appointee's interest, and was not a prescription of the time in which the donee was to make the appointment.¹⁸ This same result was recently attained in a more extreme English case, where the power was created by the donor in his will, and the covenant was made before the donor's death, though after the execution of the will. *Charlton v. Charlton*, [1906] 2 Ch. 523. The case would of course have been correct had the covenant been made after the testator's death, but the present decision, though convenient and desirable, is difficult to support, for it is hard to see how a power can be exercised before it is created. It may, however, be followed on the reasoning that the operation of the covenant, the defective appointment, is suspended until the power is created, and that it then acts as an execution of the power from that time,¹⁹ as a will passes after-acquired property.²⁰

EFFECT OF REQUESTS AND DEVISES TO A CORPORATION IN EXCESS OF CHARTER LIMITATIONS. — At common law a corporation has the implied power to acquire, by either purchase or devise, realty and personalty for the purposes of its business. Often the state, however, for reasons of public policy imposes by law express limitations either in amount or in kind. In almost every state except Pennsylvania the usual limitation against "holding" interdicted property is construed as including a limitation against "taking" such property.¹ Whether we construe this latter limitation as preventing the implication of a grant of full power to take property, or as merely inhibiting the use of that power, the determination of the rights of a corporation in personalty bequeathed to it in excess of charter limitations must be the same. On the death of a testator, his personal property passes to his personal representative for administration. If the corporation is seeking to get the bequest from him, the court should not aid it in abusing its powers and *a fortiori*

¹² *Sutherland v. Northmore*, 1 Dick. 56; *Dalby v. Pullen*, 2 Bing. 144.

¹³ *Cf. Allford v. Allford, infra.*

¹⁴ *Sweigert v. Berk's Adm.*, 8 Serg. & R. (Pa.) 299; *Booraem v. Wells*, 19 N. J. Eq. 87; *Carlyon v. Truscott*, 10 Ves. Jr. 370.

¹⁵ *Reid v. Shergold*, 10 Ves. Jr. 370. See *In re Parkin*, [1892] 3 Ch. 510, 517.

¹⁶ *In re Lambert's Estate*, [1901] 1 Ir. Ch. D. 261.

¹⁷ *Thacker v. Key*, L. R. 8 Eq. 408.

¹⁸ *Allford v. Allford*, *Gilb.* 167; *Jackson v. Jackson*, 4 Bro. Ch. *462; *Affleck v. Affleck*, 3 Smale & G. 394.

¹⁹ *Cf. In re Anstis*, 31 Ch. D. 596.

²⁰ *Cf. Holroyd v. Marshall*, 10 H. L. Cas. 191.

¹ *Wood v. Hammond*, 16 R. I. 98; *Leazure v. Hillegas*, 7 Serg. & R. (Pa.) 313.

in asserting power to take if it does not possess it.² Should the executor hand over the property which the corporation could not otherwise obtain, such payment would obviously be wrongful, and if the executor were irresponsible, the corporation should be forced to repay.³ The effect, however, of a subsequent act of the legislature enlarging the kind or amount of property which the corporation may hold, should vary according as we construe the limitation to be a denial of full power or a prohibition against the use of power. In the former case the act cannot divest the rights of the next of kin; in the latter, it removes the objection to the described legatee's taking, and the corporation should be allowed to receive the legacy.⁴

In the case of devises the construction of the limitation is all-important. Title to real estate vests in the heir and devisee *eo instante* with the death of the testator. If we say the corporation has no capacity to take title, the devise must vest in the heir on the death of the testator, and no subsequent act of the legislature can deprive him of this property without compensation. This construction of "lack of power" has been adopted in some states.⁵ Their statutory policy, which is particularly harsh to devises to corporations, might justify that interpretation. But the better construction would seem to be a mere prohibition against the use of power. It is settled that in the case of a grant of land in excess of charter limitations neither the grantor nor his heirs can upset the conveyance; that the grantees of the grantee corporation get a good title; and that the latter even has a marketable title for purposes of specific performance.⁶ The suggestion that the corporation may be a conduit of title without actually having it and that the *status quo* between the grantor and the corporation grantee is not disturbed solely for reasons based on some idea of estoppel, is not borne out by the cases. They are practically unanimous in saying that title passes to the corporation and that the state only can object in a direct proceeding to declare the charter forfeited.⁷ No real distinction is seen in this respect between a grant and a devise. Both are executed; both need the operation of law for their effect. Moreover, the analogy of the English mortmain laws sustains this interpretation. Under these acts title passed to the corporation, whether by grant or devise, subject to being forfeited by the overlord on office found.⁸ Though these laws do not obtain in the United States save in Pennsylvania,⁹ yet the same policy against the accumulation of property by the "dead hand" which dictated them, underlies in large part the statutory limitations under discussion. Hence, under the latter title should pass to the corporation, and any subsequent act of the legislature enlarging the amount of property the corporation might hold, should operate as a waiver of the state's right to declare the charter forfeited.¹⁰ And such was the holding of a recent Massachusetts case. *Hubbard v. Worcester Art Museum*, 80 N. E. Rep. 490.

² Trustees of Davidson College *v.* Chambers' Executors, 3 Jones Eq. (N. C.) 253, 273. Cf. *Case v. Kelly*, 133 U. S. 21.

³ See *Orr v. Kaines*, 2 Ves. 194.

⁴ *Chamberlain v. Chamberlain*, 43 N. Y. 424; *Jones v. Habersham*, 3 Woods (U. S.) 443, 475; aff. 107 U. S. 174.

⁵ *Matter of McGraw*, 111 N. Y. 66; *The House of Mercy v. Davidson*, 90 Tex. 529.

⁶ *Alexander v. Tolleston Club*, 110 Ill. 65; *Shewalter v. Pirner*, 55 Mo. 218; *Lancaster v. Amsterdam Improvement Co.*, 140 N. Y. 576, 586.

⁷ *Cooney v. Booth Packing Co.*, 169 Ill. 370; *Hickory Farm Oil Co. v. R. R.*, 32 Fed. Rep. 22.

⁸ *Shelford, Law of Mortmain*, 1-21.

⁹ *Cook, Corp.*, 4 ed., § 694.

¹⁰ *Farrington v. Putnam*, 90 Me. 405; *Hanson v. Little Sisters of the Poor*, 79 Md. 434. See *Cromie's Heirs v. Institution of Mercy*, 3 Bush (Ky.) 365.